

SERVICE DATE – APRIL 3, 2013

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 312 (Sub-No. 3X)

SOUTH CAROLINA CENTRAL RAILROAD COMPANY—ABANDONMENT
EXEMPTION—IN CHESTERFIELD AND DARLINGTON COUNTIES, S.C.

Decided: April 2, 2013

South Carolina Central Railroad Company, LLC (SCRF) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 12.8-mile line of railroad beginning at milepost 319.89 +/- (centerline of Burlington Drive road crossing), near Society Hill, and extending north to milepost 332.68 (south line of Market Street), including other legs of wye track extending west to milepost 332.48 (east line of U.S. Route 1), in Cheraw, in Chesterfield and Darlington Counties, S.C. Notice of the exemption was served and published in the Federal Register on January 6, 2012 (77 Fed. Reg. 835). The exemption became effective on February 5, 2012. The January 6 notice stated that, if consummation had not been effected by SCRF's filing of a notice of consummation by January 6, 2013, and there were no legal or regulatory barriers to consummation, the authority to abandon would automatically expire.

On January 12, 2012, the Town of Cheraw, S.C. (Town) timely requested a notice of interim trail use or abandonment (NITU) pursuant to the National Trails System Act, 16 U.S.C. § 1247(d), and a public use condition under 49 U.S.C. § 10905. By decision and NITU served on February 3, 2012, this proceeding was reopened and a 180-day period was authorized for the Town to negotiate with SCRF for interim trail use, and a public use condition was imposed. The NITU was vacated at the Town's request by decision served June 21, 2012, and the public use condition expired by its terms on August 3, 2012, leaving no legal or regulatory barriers to consummating the abandonment.

By letter filed on February 14, 2013, SCRF has requested an extension of the filing deadline for its notice of consummation until December 31, 2013. According to SCRF, after interim trail use negotiations between SCRF and the Town ended, SCRF began interim trail use/rail banking discussions with the Friends of the Cheraw Trail ("Friends") (albeit without Friends having sought a NITU for that purpose). According to SCRF, those discussions were interrupted during the completion of the acquisition of RailAmerica, Inc., SCRF's parent company, by Genesee and Wyoming, Inc. (GWI), which occurred at the end of 2012 and the beginning of 2013. SCRF states that as a result of that acquisition, the negotiator for SCRF left the company, and, thus, negotiations have been suspended. SCRF states that it desires to continue negotiations with Friends, and believes that Friends may file a request for a NITU over the line. In order for Friends to do so, however, SCRF states that an extension of the consummation deadline is necessary.

Under 49 C.F.R. § 1152.29(e)(2), a railroad may, for good cause, file a request for an extension of the consummation deadline in abandonment proceedings, but the request must be filed sufficiently in advance of the consummation deadline to permit the Board sufficient time to process it. Here, SCRF failed to file its extension request before the consummation deadline expired. Given, however, the unusual circumstance of the consummation deadline occurring in the midst of GWI's acquisition of RailAmerica, the late filed request will be accepted.¹

Although SCRF's late-filed request is accepted, SCRF has not justified extending the consummation deadline until December 31, 2013. The only reason SCRF gives for the requested extension is to provide Friends an opportunity to file (belatedly) a request for a NITU for the line. In a class exemption proceeding such as this, NITU requests are due 10 days after the notice of exemption is published in the Federal Register. 49 C.F.R. § 1152.29(b)(2). Given that the original deadline expired over a year ago and Friends has already been discussing potential interim trail use with SCRF since sometime last year, Friends should file promptly a request for a NITU to permit further negotiation. A 60-day extension of the consummation deadline should be sufficient for that purpose.² Therefore, SCRF's consummation deadline will be extended to 60 days from the date of service of this decision (until June 2, 2013). This extension will provide a sufficient amount of time for Friends, or any other interested trail user, to file a request for a NITU for the line.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. SCRF's request for an extension of time to consummate the abandonment is granted to the extent set forth above.
2. The authority to abandon must be exercised and the notice of consummation must be filed on or before June 2, 2013.
3. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

¹ Although SCRF's extension request was late filed, the Board has on occasion granted an extension when the request was similarly belated. See, e.g., Union Pac. R.R. Co.—Aban. Exemption—In Bowie Cnty., Tex., AB 33 (Sub-No. 271X) (STB served Jan. 8, 2010).

² Of course, if a NITU is issued, that becomes a barrier to consummation and provides another 180 days for the parties to negotiate an interim trail use agreement.